

Return Date: June 28<sup>th</sup>, 2016  
Time: 1:25 P.M.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

**JAMES SHARP,**

Chapter 13  
Case No. 16-30001 CGM

**NOTICE OF MOTION**

Debtor(s)

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**PLEASE TAKE NOTICE**, that upon the annexed application of Jeffrey L. Sapir the Chapter 13 Trustee herein, a motion will be made before the Hon. Cecelia G. Morris, United States Bankruptcy Judge, at the United States Courthouse, located at 355 Main Street, Poughkeepsie, New York, on the 28<sup>th</sup> day of June, 2016 at 1:25 P.M. for an order dismissing the Chapter 13 case with prejudice for one (1) year pursuant to 11 U.S.C. §1307(c )(1), (c )(4) and (c )(9); §521(i) and §521(e)(2)(A)(i) and (2)(B); on the ground that there has been unreasonable delay by the debtor that is prejudicial to creditors, in that the debtor has failed to file with this Court, in part, copies of all payment advices or evidence of other payments received within 60 days; failed to provide copies of federal and state tax returns for the most recent years preceding the commencement of the bankruptcy proceeding; failed to remit timely plan payments; failed to appear and be examined at a §341(a) meeting of creditors; and the debtor having filed three prior petitions with this Court; and further, for a review of attorney's fees pursuant to 11 U.S.C. §330; and for such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that answering papers, if any, are to be served on the undersigned and filed with the Court no later than three (3) days prior to the return date of this motion, and (a) must comply with the Bankruptcy Court's electronic filing system in

accordance with General Order M-242 and Supplemental General Order M-269.

Dated: White Plains, New York  
June 10<sup>th</sup>, 2016

/s/ Jeffrey L. Sapir  
**Jeffrey L. Sapir, Esq. (JLS 0938)**  
**Chapter 13 Trustee**  
**399 Knollwood Road**  
**White Plains, New York 10603**  
**Chapter 13 Tel. No. 914-328-6333**

TO: United States Trustee  
74 Chapel Street  
Albany, New York 12207

James Sharp  
50 Townsend Farm Road  
Lagrangeville, New York 12540

Daren A. Webber, Esq.  
134 West Main Street # 2  
Goshen, New York 10924

NYS Department of Taxation & Finance  
Bankruptcy Section  
P.O. Box 5300  
Albany, New York 12205

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, Pennsylvania 19101-7346

Citizens Bank, NA  
c/o Harris Beach PLLC  
Att'n: Kevin Tompsett, Esq.  
99 Garnsey Road  
Pittsford, New York 14534

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

**JAMES SHARP,**

Chapter 13  
Case No. 16-30001 CGM

**APPLICATION**

Debtor(s)

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**TO THE HON. CECELIA G. MORRIS, BANKRUPTCY JUDGE:**

1. The debtor filed the instant voluntary Chapter 13 proceeding on April 11<sup>th</sup>, 2016 which case was transferred intradistrict from Manhattan to Poughkeepsie on April 15, 2016.
2. The debtor failed to comply with the provisions of 11 U.S.C. §1307(c)(1) and (c)(4).
3. The debtor is in violation of 11 U.S.C. §521(i) of the Bankruptcy Code which requires the debtor to file, in part, copies of all payment advices or evidence of other payments received within 60 days.
4. The debtor is in violation of §521(e)(2)(A)(i) of the Bankruptcy Code which requires the debtor to provide *seven (7) days prior to the §341(a) meeting of creditors*, copies of federal and state tax returns for the most recent years preceding the commencement of the case, to wit, 2014 and 2015.
5. The debtor has failed to remit timely plan payments to the trustee, having remitted -0- payments, and being, at this juncture, one month in arrears with a further payment becoming due on June 11<sup>th</sup>, 2016.
6. The debtor failed to appear and be examined at the initial §341(a) meeting of creditors and adjourned meeting thereof. Counsel appeared on both occasions.

7. There is no automatic stay in the instant proceeding.
8. The debtor has filed three prior petitions and has never appeared at a §341(a) meeting. All prior cases were voluntarily withdrawn. No plan payments were ever remitted to the trustee on any of the prior cases.
9. The facts in detail of the three prior petitions and the instant petition are as follows:
  - a. Case No. 14-36209 CGM
    - i. Debtor filed a voluntary petition under Chapter 13 on June 11, 2014.
    - ii. Petition and schedules were filed.
    - iii. Counsel was paid the sum of \$4,500.00 as a retainer,
    - iv. The 2016(b) statement stated that the fee included filing of the petition, schedules and plan.
    - v. The schedules were incomplete and no plan was filed.
    - vi. Debtor did not appear at the §341(a) meeting of creditors scheduled for July 9, 2014 and same was adjourned to August 19, 2014.
    - vii. Debtor made no payments to the trustee.
    - viii. The case was voluntarily dismissed on July 15, 2014.
  - b. Case No. 15-35405 CGM
    - i. Debtor filed a voluntary petition under Chapter 13 on March 6, 2015.
    - ii. Petition and schedules were filed as well as a chapter 13 plan.
    - iii. Counsel was paid \$5,500.00 as a retainer.
    - iv. The 2016(b) statement stated that counsel would give the debtor financial advice, filed the petition, schedules, plan and attend the §341(a) meeting of creditors.
    - v. The §341(a) meeting was held on April 1, 2015 and the debtor failed to appear. The meeting was adjourned to April 15, 2015.
    - vi. The debtor remitted no plan payments to the trustee.
    - vii. On April 15, 2015, the debtor filed a voluntary application to dismiss his case and an order was signed on April 17, 2015.
  - c. Case No. 15-37137 CGM
    - i. Debtor filed a voluntary petition under Chapter 13 on November 20, 2015.
    - ii. Petition and schedules were filed basically copying the two previous filings/
    - iii. No plan was filed.
    - iv. Counsel was paid \$5,500.00 as a retainer.
    - v. The 2016(b) statement was the same as previously filed.
    - vi. Neither the debtor nor counsel appeared at the §341(a) meeting scheduled for December 23, 2015 and the meeting was adjourned to January 20, 2016.
    - vii. On January 20, 2016, the debtor filed a voluntary withdrawal of his case.

- d. The instant Case No. 16-30001 CGM
  - i. Within 90 days of the dismissal of the prior case, the debtor filed a voluntary petition under Chapter 13 on April 11, 2016 listing a residence in New York City and a mailing address in Lagrangeville, New York. This case was filed in New York City.
  - ii. The petition and schedules were filed being almost an exact copy of ht previously filed paperwork.
  - iii. No plan was filed at the initial filing.
  - iv. Counsel was paid \$3,000.00 as a retainer fee.
  - v. The retainer stated the same as the previous filings.
  - vi. The venue was transferred from Manhattan to Poughkeepsie

10. To date counsel has been paid the total sum of \$18,500.00 for the four cases.

11. Unreasonable delay has been created that is prejudicial to creditors.

12. The debtor having failed to comply with the abovementioned sections of the Bankruptcy Code, this Chapter 13 case should be dismissed with prejudice for one (1) year pursuant to 11 U.S.C. §1307(c )(1), (c )(4), (c )(9), §521(i) and §521(e)(2)(A)(i) and (2)(B); and for a review of attorney's fees pursuant to 11 U.S.C. §330; and for such other and further relief as this Court may deem just and proper.

Dated: White Plains, New York  
June 10<sup>th</sup>, 2016

/s/ Jeffrey L. Sapir  
**Jeffrey L. Sapir**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
IN RE:

Chapter 13  
Case No. 16-30001 CGM

**JAMES SHARP,**

Debtor(s)

-----x

**AFFIDAVIT OF MAILING**

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) ss.:

Lois Rosemarie Esposito, being duly sworn, deposes and says:

I am not a party to the action herein, I am over the age of 18 years and reside in the County of Westchester, State of New York.

On June 10<sup>th</sup>, 2016 I served a true copy of the within document, to the herein listed parties at the address(es) designated for that purpose, by mailing same in a properly sealed envelope with postage prepaid thereon, in an official depository of the United States Postal Service within the State of New York to the following:

**TO:** United States Trustee  
74 Chapel Street  
Albany, New York 12207

James Sharp  
50 Townsend Farm Road  
Lagrangeville, New York 12540

Daren A. Webber, Esq.  
134 West Main Street # 2  
Goshen, New York 10924

NYS Department of Taxation & Finance  
Bankruptcy Section  
P.O. Box 5300  
Albany, New York 12205

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, Pennsylvania 19101-7346

Citizens Bank, NA  
c/o Harris Beach PLLC  
Att'n: Kevin Tompsett, Esq.  
99 Garnsey Road  
Pittsford, New York 14534

/s/ Lois Rosemarie Esposito  
Lois Rosemarie Esposito

Sworn to before me this  
10<sup>th</sup> day of June, 2016

/s/ Jeffrey L. Sapir  
Jeffrey L. Sapir  
Notary Public, State of New York  
No. 02SA8764500  
Qualified in Rockland County  
Term Expires: 12/31/18

